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REMARKS

Claims 1-25 remain pending in the above-referenced application. Claims 24 and 25 have been withdrawn from consideration, and claim 1 has been amended. No new matter has been added.

Claims 1-15 stand rejected under 35 U.S.C. § 112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In view of the amendment made to claim 1, withdrawal of this rejection is requested.

Claims 1-8, 15-19, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,514,115 to Frantzen et al. ("Frantzen") in view of International Published Application No. WO 02/36045 to Walak ("Walak"). With respect to claim 1, the Examiner correctly concedes that neither of these references teaches the strain conditions or the stability of the martensitic phase, yet the Examiner claims he has made "a reasonable assumption that these parameters would also be the same or nearly so in the prior art and the claimed invention." Office Action at page 3. On the basis of this "reasonable assumption," the Examiner believes that a "prima facie case of obviousness is established." *Id.*

Applicants respectfully submit that a true prima facie case of obviousness rests on evidence and not the assumptions of Examiners, reasonable or otherwise. Evidence in the form of documented recordings of prior activity in a technical field, and not the unsupported speculation of an Examiner, must be the basis of all rejections. Clearly the Examiner could not find any passage in either of these references that met the strain conditions or the martensitic stability recited in claim 1. When the Examiner cannot account for every limitation in a claim in the prior art, the role of the Examiner is to allow that claim, not engage in leaps of speculative proclamations intended to serve as rationalizations for the absence of hard evidence. In a section entitled "Basic Requirements of a *Prima Facie* Case of Obviousness," the MPEP (Section 2143) states that the "prior art reference (or references when combined) must teach or suggest all the claim limitations." Since the Examiner concedes that Frantzen and Walak do not "teach or suggest all the claim limitations," withdrawal of the rejection is respectfully requested.

The same reasoning applies to the rejection of claims 1, 3-8, 14-19, 22, and 23 in view of United States Patent No. 6,923,829 to Boyle.

As for the prior art rejections of claims 2, 9-13, 20, and 21 in view of the above references and United States Patent No. 5,964,770 to Flomenblit, the above reasoning applies.

As for the rejection based on obviousness type double patenting, Applicantss submit herewith a terminal disclaimer to obviate the rejection.

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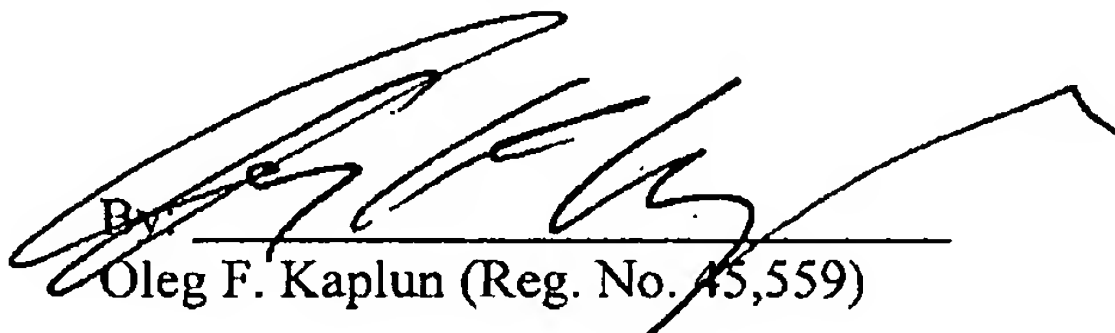
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CONCLUSION

All issues raised by the Examiner having been addressed, Applicants submit that the application is in condition for allowance.

Respectfully submitted,

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By _____
Oleg F. Kaplun (Reg. No. 45,559)

Fay Kaplun & Marcin, LLP
150 Broadway, Suite 702
New York, N.Y. 10038
(212) 619-6000 (telephone)
(212) 619-0276 (facsimile)